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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179733
Party	Defendant PM Productions
Correspondence Address	PM PRODUCTIONS 5882 BOWCROFT ST UNIT 2 LOS ANGELES, CA 90016-4907 odellmack@hotmail.com
Submission	Testimony For Defendant
Filer's Name	Alero Odell Mack
Filer's e-mail	odellmack@hotmail.com
Signature	/Alero Odell Mack/
Date	11/05/2007
Attachments	Defendant's Testimony #78785250.pdf (13 pages)(108192 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78785250

Filed on January 4, 2006

For the Mark TVN THE VIDEOZATION NETWORK

Published in the Official Gazette on April 3, 2007

TVN ENTERTAINMENT CORPORATION, a)	TESTIMONY FOR
)	DEFENDANT NO.
Delaware corporation,)	
)	
Opposer,)	
)	
v.)	
)	
PM PRODUCTIONS, a Sole Proprietorship)	
)	
Applicant.)	

Commissioner for Trademarks
Post Office Box 1451
Alexandria, Virginia 22313-1451

TESTIMONY FOR DEFENDANT

Dear Commissioner:

Defendant, PM Productions, is a Sole Proprietorship located and doing business at
5882 Bowcroft Street, #2, Los Angeles, California 90016 and does not believe that

DEFENDANTS TESTIMONY
SERIAL NO. 78785250

registration of the mark shown in Serial No 78785250 will damage the Opposer in any way, shape or form. The grounds for such un-belief are as follows:

BACKGROUND FACTS

I. PM PRODUCTIONS

1. PM Productions was organized in 1986 as a partnership. It was converted to a Sole Proprietorship in 1996 when one partner made a transition. Since its inception, PM Productions has used the symbol (logo) shown in attached Exhibit A in correspondence and in transacting business. This symbol in no way resembles that shown on the website of TVN Entertainment Corporation.

2. Since 1986, PM Productions has produced and aired television programs and commercials, and has provided professional video production services for clients, mostly small, independent event producers. These services have included stage plays, television programs and commercials, infomercials, concerts, talent showcases, music videos, etc. Additional services have included various types of events such as church services, church programs, weddings, anniversaries, parties, artist demos, awards by various organizations, etc. PM Productions continues to provide and intends to continue providing such and similar services to existing and new clients using the mark referred to and shown in Exhibit A.

3. Therefore, PM Productions agrees with Paragraph #'s 13, 14, 16, and 17. Were it not for the word "propensity" being used in Paragraph #'s 15, 18, 19, 20, we

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

would agree with that as well. No human can control what someone else does or may do. To deny PM Productions to seek the opportunity to engage in the activities so specified in said paragraphs is not only unfair competition, but obstruction of business opportunity. While said services may be similar, they are not being and will not be provided under the mark applied for in Serial #78785250. They will be solicited using the logo so shown in Exhibit A.

4. PM Productions is a very small video production company, hiring production personnel on an "as needed" basis, and poses no threat of competition or damage to TVN Entertainment Corporation whatsoever. While we would like to provide nationwide service, the fact is that it is presently confined California, mainly Los Angeles and surrounding areas.

5. The Videozation™ Network is a subsidiary of PM Productions. It is a network of organizations and individuals who network to provide entertainment, educational, and inspirational videos to interested individuals, while at the same time provide a means for such individuals and organizations to earn a substantial income. Therefore, The Videozation™ Network is a network marketing organization that requires membership in order for such members to receive products the organization has to offer and thereby earn an income.

6. The Videozation™ Network does not offer and does not intend to offer any type of professional video production services, neither does it purchase or intend to purchase videos or films on any types of media. It will only distribute among its members projects made available to it for purchase by other members.

II. APPLICANT AND OPPOSER

7. Hereinafter, "Applicant" shall refer to PM Productions and "Opposer" shall refer to TVN Entertainment Corporation.

III. THE VIDEOZATION™ NETWORK

8. A check of TVN Entertainment Corporation's website reveals a completely different mark from the stylized mark applied for in Serial No. 78785250. In fact, the complete mark is TVN Entertainment, not just TVN. Opposer claims to have promoted only TVN when in fact, Opposer has promoted TVN Entertainment Corporation. (Opposer's Paragraph #'s 7 and 9)

9. Search engines searching for TVN bring up TVN Entertainment—with "Entertainment" (*Please see Exhibit B*) clearly a part of the mark, not The Videozation Network. (*Opposer's Paragraph #9*) Opposer appears to be attempting to separate "Entertainment" from the mark for the purposes of this opposition, when in fact it is a part of the mark as it appears on his website. Therefore, there is no possibility whatsoever that anyone could ever confuse that mark with the one applied for in Serial No. 78785250.

10. The TVN mark (*each letter with black outline or shade*) in the three-word name of the organization and represent the complete name: The Videozation™ Network. Opposer uses TVN as only part of its name in its mark, TVN Entertainment. Therefore, there is no possibility whatsoever that anyone could ever confuse the two completely

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

different marks or the two completely different names, or think that they were somehow related.

11. The Videozation™ Network is a membership, network organization and offers its services directly to the end-user—members of the organization only. (*See Paragraph #'s 4 and 5 above*) It offers an actual tangible product that can be touched, whereas Opposer offers specified services to viewers (Opposer's Paragraph #10) through third parties providing television programming services to the end-user or viewer. Products offered by The Videozation™ Network are not intended for re-broadcast or "programming" as it is commonly referred to in the industry. Therefore, there is no possibility whatsoever that anyone could ever confuse the marks, the two completely different company names, or the two vastly different services and products provided by these two totally different companies.

12. The Videozation ™Network is intended to operate as a subsidiary of PM Productions and neither offers nor engages in, or does it intend to offer or engage in any of the services or activities described in Opposer's Paragraph #13. Such services and activities will be conducted by the parent company, the Applicant, PM Productions.. (*See Opposer's Paragraph #14.*)

13. Applicant firmly states, except as implied in Paragraph #3 above regarding the use of the word "propensity," that it is impossible, given the current activities of Opposer and those of Applicant, for anything described in Opposer's Paragraph #15 to occur since all services described in Opposer's Paragraph #14 will be solicited by and performed in the name of Applicant and under the symbol shown in Exhibit A.

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

14. Opposer's Paragraph #18 plainly states how Applicant intends to deliver content. This implies that Opposer understands that Applicant's delivery method is totally different from his and as Opposer states in Paragraph #16, he understands that The Videozation™ Network is a membership organization and that one must be a member of the organization in order to receive the content. Therefore, Applicant asks "What is the purpose of the opposition in the first place?"

15. In Paragraph #21, Opposer admits that Applicant's stylized mark is in essence the name, The Videozation™ Network. Opposer's mark is different in that (i) it in no way resembles that of the stylized drawing of The Videozation™ Network and (ii) TVN is not the complete mark of Opposer. The complete mark consists of TVN Entertainment with "Entertainment" partially encircling the letters TVN, which, incidentally, are not even shaped like the letters in the mark with Serial No. 78785250. Therefore, Applicant believes and alleges that it is impossible for anyone, looking at the two marks, placed side by side or otherwise, to get the marks confused or the two organizations confused or believe that the two organizations are in any way related.

16. Regarding Opposer's Paragraph #'s 23-25, Applicant believes that it has clearly shown that the marks are not similar in any way, that suppliers and customers are different, and that nothing stated or implied said paragraphs of Opposer is likely to occur.

17. Applicant firmly states in the strongest terms that the allegations in Opposers Paragraph #'s 27 and 28 are totally false and groundless, based purely on conjecture, a lack of understanding and knowledge of Applicant's purpose and the

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

intended scope of operations of Applicant. Although Opposer does appear to understand, as previously stated.

18. Applicant unequivocally states that services offered under the mark applied for in Serial 78785250 are in no way competitive with those currently provided by Opposer and that such services are in no way dependent upon the services provided by Opposer as stated in Opposer's Paragraph #30.

19. Applicant states and believes that there is not now and therefore never will be a false suggestion of a connection with TVN Entertainment Corporation and The Videozation™ Network. Thus, incorporating all reasons herein previously stated, TVN Entertainment's reputation will not be injured as claimed in Opposer's Paragraph #31.

20. Opposer lays a claim to fame for his mark in Paragraph #33 and in Paragraph #34 states that the "acts described above . . .has diluted and will continue to dilute the distinctive quality of the Opposer's Mark." Perhaps due to the lack of knowledge on the part of Applicant, Applicant had never heard of Opposer prior to being contacted by Opposer's attorney. That is because of the fact that both The Videozation™ Network and Opposer have different suppliers and customers. They do not cross paths. The Videozation™ Network is its own distributor and makes no content purchases, as Opposer implies in Paragraph #31. It does not distribute programming content to networks for re-broadcast. Since the acts in which The Videozation™ Network is engaging are totally different from those of Opposer, no dilution has occurred and no section of any code, Federal or State, has been violated.

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

21. Since the marks do not resemble each other in any way, Applicant believes that there is no trademark infringement under the common law of the State of California, (Opposer's Paragraph #39) no unfair competition as implied in Opposer's Paragraph #43—in fact no competition at all since we do not have the same customers, and no “unlawful and unfair business practices” have been performed or may be performed. There is nothing about the operations of The Videozation™ Network that is unfair, deceptive and misleading and certainly no threats to injure TVN Entertainment in its business.

PRAYER FOR GRANTING AND PROTECTION

22. Applicant believes that it has shown that Opposer's reasons for opposing its application are groundless, based purely on conjecture and a lack of knowledge. Nevertheless, however, Opposer states in Paragraph #16 that he believes what The Videozation™ Network is all about. Perhaps Opposer doesn't understand what he believes. It would neither greatly nor irreparably damage TVN Entertainment Corporation. In fact, the granting of such registration would do no harm to TVN Entertainment Corporation whatsoever.

23. Applicant believes the above to be true for the following reasons and believes that he has shown that:

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

a) The activities of Applicant through use of The Videozation™ Network are not in competition with Opposer because customers are not the same. The Videozation™ Network is a membership organization of regular, everyday consumers who purchase and/or rent video tapes and DVD's. Opposer's customers are broadcast networks.

b) Suppliers are not the same. Applicant will produce an extremely large segment of the material to be distributed through The Videozation™ Network. In cases where Applicant does go outside for material, such material will **not** be purchased, but will be placed in the networking organization by a member of the organization. No money will exchange hands in acquiring materials to be distributed through The Videozation™ Network. Thus, Applicant's suppliers are event producers and independents seeking "out-of-the-box channels of distribution.

c) Any kind of video production services offered by Applicant that may in any way be similar production services offered by Opposer are being offered only by the parent company, PM Productions, using the logo indicated in Exhibit A. The Videozation™ Network does not offer any kind of production services whatsoever.

c) Activities are not the same in that the nature and the goals of the two businesses are not the same. Opposer's goal is to supply programming content to customers (broadcast networks) for re-broadcast. Applicant does not

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

do that and has no intentions of doing so. Applicant's goal is not to supply programming content as "programming content" is generally defined in the industry, but to provide video content for purchases by members of the organization that is submitted by other members—of the same organization.

d) The two marks, Exhibit B and Exhibit C, are in now way similar. How could anyone, (and this is not meant to mock anyone) even someone with a learning disability, confuse the two marks and believe that the two organizations are somehow the same or related? How could anyone believe that a company would conduct the same or similar activities under two drastically different marks? It just doesn't make sense that anyone would. Lastly, how could anyone reading the names, TVN Entertainment Corporation and The Videozation™ Network and looking at the two completely, distinctively different marks think that they are the same, are related, or get them confused?

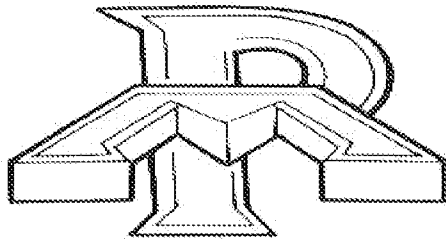
24. Now, therefore, Applicant prays that this Board please look with favor upon the foregoing statements and consider the evidence in the exhibits attached hereto and submitted as a part of this testimony and thus please grant the registration of the mark applied for in the application under Serial #78785250 and grant all protections provided therewith. Said mark is entered here as Exhibit C for your convenience

Submitted by: Alero Odell Mack, Owner
PM Productions
5882 Bowcroft Street, #2
Los Angeles, CA 90016-4907

Date: November 4, 2007

DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

EXHIBIT A



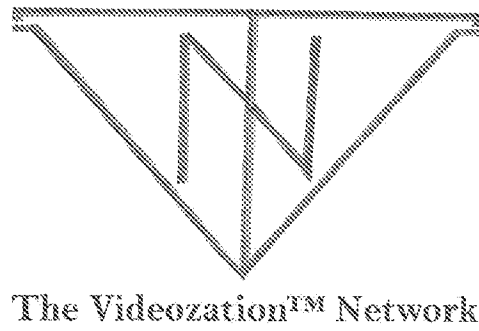
DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

EXHIBIT B



DEFENDANT'S TESTIMONY
SERIAL NO. 78785250

EXHIBIT C



The Videozation™ Network